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Iraq: Elections, Government, and Constitution

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Summary

Elections in 2005 for a transition government (January 30, 2005), a permanent constitution (October 15), and a permanent (four year) government (December 15) were concluded despite insurgent violence, progressively attracting Sunni participation. On May 20, a unity government was formed as U.S. officials had been urging, but it is not clear that the new government will be able to reduce ongoing violence. (See CRS Report RL31339, *Iraq: Post-Saddam Governance and Security*, by Kenneth Katzman.)

After Operation Iraqi Freedom (OIF) deposed Saddam Hussein in April 2003, the Bush Administration linked the end of U.S. military occupation to the adoption of a new constitution and national elections, tasks expected to take two years. Prominent Iraqis persuaded the Administration to accelerate the process, and sovereignty was given to an appointed government on June 28, 2004, with a government and a permanent constitution to be voted on thereafter, as stipulated in a Transitional Administrative Law (TAL, signed March 8, 2004 [<http://cpa-iraq.org/government/TAL.html>]). Elections were held on January 30, 2005, for a 275-seat transitional National Assembly; a provincial assembly in each of Iraq's 18 provinces (41 seats each; 51 for Baghdad); and a Kurdistan regional assembly (111 seats). The Assembly chose a transitional "presidency council" (a president and two deputies), a prime minister with executive power, and a cabinet. The transitional Assembly was to draft a constitution by August 15, 2005, to be put to a referendum by October 15, 2005. The draft could be vetoed with a two-thirds majority of the votes in any three provinces. A permanent government, elected by December 15, 2005, was to take office by December 31, 2005. If the constitution was defeated, the December 15 elections would be for another transitional National Assembly (which would re-draft a constitution).

January 30 Elections

The January 30, 2005, elections, run by the "Independent Electoral Commission of Iraq" (IECI), were conducted by proportional representation (closed list); voters chose among "political entities" (a party, a coalition of parties, or individuals). Seats in the Assembly and the provincial assemblies were allocated in proportion to a slate's showing; any entity receiving at least 1/275 of the vote (about 31,000 votes) won a seat. A female

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candidate occupied every third position on electoral lists in order to meet the TAL's goal for at least 25% female membership. A total of 111 entities were on the National Assembly ballot: 9 multi-party coalitions, 75 single parties, and 27 individual persons. The 111 entities contained over 7,000 candidates. About 9,000 candidates, organized into party slates, ran in provincial and Kurdish elections.

In the January 30 (and December 15) elections, Iraqis abroad were eligible to vote. The International Organization for Migration (IOM) was tapped to run the "out-of-country voting" (OCV) program. OCV took place in Australia, Canada, Denmark, France, Germany, Iran, Jordan, Sweden, Syria, Turkey, UAE, Britain, Netherlands, and the United States. (See [<http://www.iraqocv.org>].) About 275,000 Iraqi expatriates (dual citizens and anyone whose father was Iraqi) registered, and about 90% of them voted (in January).

The Iraqi government budgeted about \$250 million for the January elections, of which \$130 million was offset by international donors, including about \$40 million from the European Union. Out of \$21 billion in U.S. reconstruction funds, the United States provided \$40 million to improve IECI capacity; \$42.5 million for Iraqi monitoring; and \$40 million for political party development, through the International Republican Institute and National Democratic Institute. OCV cost an additional \$92 million, of which \$11 million was for the U.S. component, but no U.S. funds were spent for OCV.

Violence was less than anticipated; insurgents conducted about 300 attacks, but no polling stations were overrun. Polling centers were guarded by the 130,000 members of Iraq's security forces, with the 150,000 U.S. forces in Iraq available for backup. Two days prior to election day, vehicle traffic was banned, Iraq's borders were closed, and polling locations were confirmed. Security measures were similar for the October 15 and December 15 votes, although with more Iraqi troops and police trained (about 215,000) than in January. Polling places were staffed by about 200,000 Iraqis in all three elections in 2005. International monitoring was limited to 25 observers (in the January elections) and some European parliament members and others (December elections).

Competition and Results. The Iraqi groups that took the most active interest in the January elections were those best positioned: Shiite Islamist parties, the Kurds, and established secular parties. The results of this and the December 2005 election are shown in the table below. The most prominent slate was the Shiite Islamist "United Iraqi Alliance" (UIA), consisting of 228 candidates from 22 parties, primarily the Supreme Council for the Islamic Revolution in Iraq (SCIRI) and the Da'wa Party. The first candidate on this slate was SCIRI leader Abd al-Aziz al-Hakim; Da'wa leader Ibrahim al-Jafari was number seven. Even though radical Shiite cleric Moqtada al-Sadr denounced the election as a U.S.-led process, 14 of his supporters were on the UIA slate; eight of these won seats. The two main Kurdish parties, the Patriotic Union of Kurdistan (PUK) and the Kurdistan Democratic Party (KDP) offered a joint 165-candidate list. Interim Prime Minister Iyad al-Allawi filed a six-party, 233-candidate "Iraqi List" led by his Iraqi National Accord (INA) party.¹

Sunni Arabs (20% of the overall population), perceiving electoral defeat and insurgent intimidation, mostly boycotted and won only 17 seats spread over several lists.

¹ See CRS Report RL31339, *Iraq: Post-Saddam Governance and Security*, by Kenneth Katzman.

The relatively moderate Sunni “Iraqi Islamic Party” (IIP) filed a 275-seat slate, but it withdrew in December 2004. The hard-line Iraqi Muslim Scholars Association (MSA), said to be close to the insurgents, called for a Sunni boycott.

After the election, factional bargaining over governmental posts and disagreements over Kurdish demands for substantial autonomy delayed formation of the government. During April and May, the factions formed a government that U.S. officials said was not sufficiently inclusive of Sunnis, even though it had a Sunni (Hajim al-Hassani) as Assembly speaker; a Sunni deputy president (Ghazi al-Yawar); a Sunni deputy prime minister (Abd al-Mutlak al-Jabburi); a Sunni Defense Minister (Sadoun Dulaymi); and five other Sunni ministers. Most major positions were dominated by Shiites and Kurds, such as PUK leader Jalal Talabani as president and Da’wa leader Ibrahim al-Jafari as Prime Minister; SCIRI’s Adel Abd al-Mahdi was second deputy president. In provincial elections, the Kurds won about 60% of the seats in Tamim (Kirkuk) province (26 out of 41 seats), strengthening the Kurds’ efforts to gain control of the province.

Permanent Constitution and Referendum

The next step in the transition process was the drafting of a permanent constitution. On May 10, the National Assembly appointed a 55-member drafting committee, chaired by SCIRI activist Humam al-Hammoudi. The committee included only two Sunni Arabs, prompting Sunni resentment, and 15 Sunnis (and one member of the small Sabian community) were later added as full committee members, with 10 more as advisors. Missing the August 15 deadline to produce a draft, the talks produced a document on August 28 that included some compromises sought by Sunnis — the Shiites and Kurds declared it final. The Kurds achieved a major goal; Article 136 set December 31, 2007, as a deadline for resettling Kurds in Kirkuk and holding a referendum on whether Kirkuk will join the Kurdish region.

The draft (Article 2)² designated Islam “a main source” of legislation and said no law can contradict the “established” provisions of Islam. Article 39 implied that families could choose which courts to use to adjudicate family issues such as divorce and inheritance, and Article 34 made only primary education mandatory. These provisions provoked opposition from women who fear that the males of their families will decide to use Sharia (Islamic law) courts for family issues and limit girls’ education. The 25% electoral goal for women was retained (Article 47). Article 89 said that federal supreme court will include experts in Islamic law, as well as judges and experts in civil law.

The remaining controversy centered on the draft’s provision allowing two or more provinces together to form new autonomous “regions.” Article 117 allowed each “region” to organize internal security forces, which would legitimize the fielding of sectarian (presumably Shiite) militias, in addition to the Kurds’ *peshmerga* (allowed by the TAL). Article 109 requires the central government to distribute oil and gas revenues from “current fields” in proportion to population, implying that the regions might ultimately control revenues from new energy discoveries. These provisions raised Sunni alarms, because their areas have few known oil or gas deposits. Sunni negotiators, including chief negotiator Saleh al-Mutlak of the National Dialogue Council opposed the draft on

² [<http://www.washingtonpost.com/wp-dyn/content/article/2005/10/12/AR2005101201450.html>].

these grounds. Article 62 establishes a “Federation Council, a second chamber of a size with powers to be determined, presumably to review legislation affecting regions.

After further negotiations, on September 19, 2005, the National Assembly approved a “final” draft, with some Sunni proposals, such as a statement that Iraq has always been part of the Arab League. However, no major changes to the provisions on new regions were made and Sunnis registered in large numbers (70%-85% in some Sunni cities) to try to defeat the constitution. The United Nations printed and distributed 5 million copies. The continued Sunni opposition prompted U.S. Ambassador to Iraq Zalmay Khalilzad to mediate an agreement (October 11) between Kurdish and Shiite leaders and a major Sunni party, the Iraqi Islamic Party, providing for (Article 137) a panel to convene after the installation of a post-December 15 election government and, within four months, propose a bloc of amendments. The amendments require a majority Assembly vote of approval and, within another two months, would be put to a public referendum under the same rules as the October 15, 2005 referendum. As of its seating on March 16, 2006, the new parliament was expected to begin work on amending the constitution, as provided in Article 137. It has not done so, to date, and might not do so until September 2006, according to observers. Some believe that the Sunnis are not pressing the amendment process because they fear that the UIA will not agree to major amendments, and the Sunnis do not want to force a political confrontation.

The October 15 referendum was relatively peaceful. Results, released October 25, were 78.6% in favor and 21.4% against, nationwide. The Sunni provinces of Anbar and Salahuddin had a 97% and 82% “no” vote, respectively. Mostly Sunni Nineveh province voted 55% “no,” and Diyala, believed mostly Sunni, had a 51% “yes” vote. The draft passed because only two provinces, not three, voted “no” by a 2/3 majority. The Administration praised the vote as evidence that Sunnis support the political process.

December 15, 2005, Elections

In the December 15 elections, under a formula designed to enhance Sunni representation, each province contributed a pre-determined number of seats to the new “Council of Representatives.” Of the 275-seat body, 230 seats were allocated this way, and there were 45 “compensatory” seats for entities that did not win provincial seats but garnered votes nationwide, or which would have won additional seats had the election constituency been the whole nation. A total of 361 political “entities” registered: 19 of them were coalition slates (comprising 125 different political parties), and 342 were other “entities” (parties or individual persons). About 7,500 candidates spanned all entities.

Most notably for U.S. policy, major Sunni slates competed. Most prominent was the three-party “Iraqi Concord Front,” comprising the IIP, the National Dialogue Council, and the Iraqi People’s General Council. The UIA slate formally included Sadr’s faction as well as other hard line Shiite parties *Fadila* (Virtue) and Iraqi Hizballah. Ahmad Chalabi’s Iraqi National Congress ran separately. Former Prime Minister Iyad al-Allawi’s mostly secular 15-party “Iraqi National” slate was broader than his January list, incorporating not only his Iraq National Accord but also several smaller secular parties. The Kurdish alliance slate was little changed from January.

Violence was minor (about 30 incidents) as Sunni insurgents, supporting greater Sunni representation in parliament, facilitated the voting. However, results suggest that

voters chose lists representing their sects and regions, not secular lists. The table gives results that were court-certified on February 10, 2006. According to the constitution: within 15 days of certification (by February 25), the Council of Representatives was to convene to select a speaker and two deputy speakers. The Council first convened on March 16, but without selecting these or any other positions. After choosing a speaker the Council was to select (no deadline specified, but a thirty-day deadline for the choice after subsequent Council elections), a presidency council for Iraq (President and two deputies). Those choices required a 2/3 vote of the Council. Within another 15 days, the presidency council (by consensus of its three officials) was to designate the “nominee of the [Council] bloc with the largest number” as Prime Minister, the post that has executive power. Within another 30 days, the prime minister designate was to name a cabinet for approval by majority vote of the Council.

With 181 seats combined (nearly two thirds of the Council), the UIA and the Kurds were well positioned to continue their governing alliance. However, their alliance frayed when the Kurds, Sunnis, and Alawi block protested the UIA’s February 12 nomination of Jafari to continue as Prime Minister. In March 2006, attempting to promote comity, Iraqi leaders agreed to a U.S. proposal to form extra-constitutional economic and security councils including all factions. On April 20, Jafari agreed to step aside, breaking the logjam. On April 22, the Council of Representatives approved Talabani to continue as president, Abd al-Mahdi to continue as a deputy president, and another deputy president, Concord Front/IIP leader Tariq al-Hashimi. National Dialogue Front figure Mahmoud Mashhadani was chosen Council speaker, with deputies Khalid al-Attiya (UIA/Shiite) and Arif Tayfour, a KDP activist (continuing in that post). Senior Da’wa Party figure Jawad al-Maliki was named Prime Minister. Maliki, who was in exile in Syria during Saddam’s rule, is considered a Shiite hardliner, although he now professes non-sectarianism.

New Cabinet. Amid U.S. and other congratulations, Maliki named and won approval of a 39 member cabinet (including deputy prime ministers) on May 20, one day prior to his 30-day deadline. However, three key cabinet slots (Defense, Interior, and National Security) were not filled permanently until June 8 because of factional infighting. Many believe that Iran has substantial influence over the Iraqi government because of the presence of several officials who belong to Shiite Islamist organizations that have had close ties to Iran.

Of the 37 ministerial posts, a total of eight are Sunnis; seven are Kurds; twenty-one are Shiites; and one is Christian. Kurdish official Barham Salih and Sunni Arab Salam al-Zubaie are deputy prime ministers. Four ministers are women. KDP activist Hoshiyar Zebari remained Foreign Minister. The Defense Minister is Gen. Abdul Qadir Mohammad Jasim al-Mifarji, a Sunni who had been expelled from the Iraqi military and imprisoned for criticizing the invasion of Kuwait in 1990. More recently, he commanded operations of the post-Saddam Iraqi Army in western Iraq. The Interior Minister is Jawad al-Bulani, a Shiite who has been associated with a number of Shiite Islamist trends, including Sadr’s faction, and the *Fadila* (Virtue) party that is prominent in Basra. The Minister for National Security is Sherwan al-Waili, a Shiite who is from a different faction of the Da’wa Party. He has served since 2003 as head of the provincial council in the city of Nassiriyah and as adviser in the national security ministry. The Minister of Trade and Minister of Education are from this Da’wa faction. Reflecting Shiite strength:

- Sadr followers are Ministers of Health, of Transportation, and of Agriculture. Another is Minister of State for Tourism and Antiquities.
- From SCIRI, the most pro-Iranian party, Adel Abd al-Mahdi, is one of two Vice Presidents. Bayan Jabr is Finance Minister, moving there from Minister of Interior. The Minister of Municipalities and Public Works is from the Badr Organization, SCIRI's militia wing.
- Several officials in the new government are from other pro-Iranian Shiite organizations. Deputy parliament speaker Khalid al-Attiah spent time in exile in Iran. The Minister of Civil Society Affairs is from the Islamic Action Organization, a Shiite Islamist grouping based in Karbala. A minister of state (no portfolio) is from Iraqi Hizbollah, which represents former Shiite guerrilla fighters against Saddam's regime based in the city of Amarah. The Minister of Oil (Hussein Shahrstani) is an aide to Shiite leader Ayatollah Ali al-Sistani. The Minister of Electricity and the Minister of Labor and Social Affairs are independent UIA Shiites.

Table 1. Election Results (January and December)

Slate/Party	Seats (Jan. 05)	Seats (Dec. 05)
UIA (Shiite Islamist); Sadr formally joined list for Dec. vote (Of the 128: SCIRI~30; Da'wa~28; Sadr~30; Fadila~15; others~25)	140	128
Kurdistan Alliance (PUK and KDP)	75	53
Iraqis List (secular, Allawi); added some mostly Sunni parties for Dec. vote	40	25
Iraq Concord Front (Sunni). Main Sunni bloc; not in Jan. vote	—	44
Dialogue National Iraqi Front (Sunni, Saleh al-Mutlak) Not in Jan. vote	—	11
Iraqi National Congress (Chalabi). Was part of UIA list in Jan. 05 vote	—	0
Iraqis Party (Yawar, Sunni); Part of Allawi list in Dec. vote	5	—
Iraqi Turkomen Front (Turkomen, Kirkuk-based, pro-Turkey)	3	1
National Independent and Elites (Jan)/Risalyun (Mission, Dec) pro-Sadr	3	2
People's Union (Communist, non-sectarian); on Allawi list in Dec. vote	2	—
Kurdistan Islamic Group (Islamist Kurd)	2	5
Islamic Action (Shiite Islamist, Karbala)	2	0
National Democratic Alliance (non-sectarian, secular)	1	—
Rafidain National List (Assyrian Christian)	1	1
Liberation and Reconciliation Gathering (Sunni, secular)	1	3
Ummah (Nation) Party. (Secular, Mithal al-Alusi, former INC activist)	0	1
Yazidi list (small Kurdish, heterodox religious minority in northern Iraq)	—	1

Number of polling places: January: 5,200; December: 6,200.

Eligible voters: 14 million in January election; 15 million in October referendum and December.

Turnout: January: 58% (8.5 million votes)/ October: 66% (10 million)/ December: 75% (12 million).